IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

WP(C).No. 23505 of 2005(W)

CC.1543/2005 & S.T.NO.2350/05of ADDL.C.J.M., ERNAKULAM
.....

PETITIONER:

C.P. SASI, S/O. LATE R.P. NAIR,
SREEKALA BHAVAN, ATTANIYEDATH ROAD,
VENNALA, KOCHI-682 028.

BY ADV. SRI.M.P.KRISHNAN NAIR
SRI.S.BIJU (KIZHAKKANELA)
SRI.ANILKUMAR.K.N.PILLAI

RESPONDENTS:
---

1. STATE OF KERALA, REP. BY
JCHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

3. DY.INSPECTOR GENERAL OF POLICE,
ERNAKULAM RANGE, ERNAKULAM.

4. CITY COMMISSIONER OF POLICE,
ERNAKULAM.

5. ASSISTANT COMMISSIONER OF POLICE,
TRAFFIC, ERNAKULAM.

6. SUB INSPECTOR OF POLICE (TRAFFIC)
EDAPPALLY POLICE STATION, EDAPPALLY.

7. OFFICER IN-CHARGE, TRAFFIC POLICE
STATION, TRIPUNITHURA.

8. MR. A.T. CHAKKAPPAN, HEAD CONSTABLE 5064
TRAFFIC POLICE STATION, TRIPUNITHURA.

9. MR. P.N. RAJU, SUB INSPECTOR OF
POLICE (TRAFFIC), EDAPPALLY POLICE STATION,
ERNAKULAM.

ADDL.R.10. MRS. SEETHA SOMAN, W/O,. SOMAN
KAPPEKKADU HOUSE, THATTATHY PARAMBU
MARADU VILLAGE, ERNAKULAM DIST.

ADDL.R11. MR. KIRAN, S/O. PRATHAPAN, KEERTHI HOUSE
MNNEAR HILL PALCE MUSEUM,
THRIVENI NAGAR, THIRUVANKULAM VILLAGE
ERNAKULAM DIST.

ADDL.RESPONDENTS 10 & 11 IMPLEADED AS PER ORDER DATED 23-8-2005 IN IA 12304/2005.

BY ADV. SRI.N.HARIDAS
SRI.H.SUNDEEP
SRI.P.N.SASIDHARAN
SRI.K.C.JOHN(SR.)
SRI.T.H.CHACKO
PUBLIC PROSECUTOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-8-2006, THE COURT ON 13-12-2006 DELIVERED THE FOLLOWING:

WPC.23505/2005

APPENDIX:

PETIITONER'S EXTS:

EXT.P1: TRUE COPY OF THE PAPER REPORT DATED 18-1-2005 APPEARED IN MALAYALA MANORAMA.
EXT.P1(A) TRRUE COPY OF THE PAPER REPORT DT.19-1-2005.

EXT.P2: TRUE COPY OF STATEMENT OF KIRAN ON 13-1-2004 RECORDED BY THE 8TH RESPONDENT.

EXT.P3: TRUE COPY OF FIR.

EXT.P4: A TRUE COPY OF THE STATEMENT BY SEETHA SOMAN

EXT.P5: TRUE COPY OF THE REPRESENTATION DT. 17-2-2005 SUBMITTED BEFORE THE CHIEF MINISTER OF KERALA AND R 2 TO 5.

EXT.P6: TRUE COPY OF THE JUDGMENT DTD.23-3-2005 IN W.P.C.NO.7794/05 BY THIS COURT.

EXT.P7: TRUE COPY OF THE LETTER DT.5-4-05.

EXT.P8: TRUE COPY OF LETTER DT.8-6-05 ISSUED BY THE C.I.OF POLICE

EXT.P9: TRUE COPY OF THE CHARGE SHEET.
EXT.P10: TRUE COPY OF THE CERTIFICATE DT.24-11-05 ISSUED BY THE MEDICAL TRUST HOSPITAL.
EXT.P11: TRUE COPY OF THE CERTIFICATE DT.27-11-05 ISSUED BY THE RCM HOSPITAL,TRIPUNITHURA.

RESPONDENTS' EXTS:
EXT.R11(A) RUE COPY OF BIRTH CERTIFICATE OF KIRAN PRATHAP ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS CORPORATION OF COCHIN DATED 7-11-1992.

EXT.R11(B): TRUE COPY OF MEDICAL CERTIFICATE 'B' ISSUED BY DR. C.MANJU, RCM HOSPITAL RIPUNITHURA IN RESPECT OF KIRAN PRATHAP.

EXT.R11(C): TRUE COPY OF DISCHARGE SUMMARY IN RESPECT OF KIRN PRATHAP ISSUED BY AMRITHA INSTITUTE OF MEDICAL SCIENCES & RESEARCH CENTREE.
EXT.R11(D) TRUE PHOTOOCPY OF THE PAPER REPORT DATED 18-1-2005 APPEARED IN MATHRUBHOOMNI

EXT.R11(E) TRUE PLHOTOOCPY OF THE STRATEMENT DATED NIL GIVEN BY MR.K.PREMAKUMAR.
EXT.R119(F) TRUE COPY OF THE STATEMENT DATED 22-3-2005 OF ACCUSED MR.P.S.SCARIA ALATHINKAL HOUSE, PUTHENCRUZ.

EXT.R11(G) A TRUE COPY O THE STATEMENT DATED 20-3-2005 OF MR.K.V.RAJU, AN EYE WITNESS TO THE ACCIDENT.

EXT.R11(H) TRUE COPY OF THE STATEMENT OF KIRAN, P;ILLION RIDER AND R 11 OF THE WPC. DT. 10-3-05.

EXT.R11(I) TUE PHOTOCOPY OF THE LETTER DT. 8-6-05 OF CIRCLE INSPECTOR OF POLICE, ADDRESSED TO MR.M.P.KRISHNAN NAIR, ADVOCATE.

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

W.P.C.NO.23505 OF2005

DATED THIS THE 13TH DAY OF DECEMBER 2006

JUDGMENT

The petitioner, who is the father of the deceased Sreekanth, a Plus Two student who died in the traffic accident that took place on 13-1-2005, has sought for further investigation into the matter by the Crime Branch. It is submitted that the son of the petitioner died on 17-1-2005 due to the head injury sustained in the accident that took place on 13-1-2005 at 3.45 p.m. near R.C.M.hospital, Tripunithura. The deceased had gone to his friend Kiran's house for joint study of computer practical after the class hours. Both of them were students of +2 Commerce Group in Chinmaya Vidyalaya, Tripunithura. After the studies, Kiran undertook to drop Sreekanth, the petitioner's son at Tripunithura bus stand in his friend's bike. Kiran was the driver and Sreekanth, the pillion rider. The vehicle had collision with another motor cycle driven by one Skaria who came from the opposite direction. The accident occurred on account of the negligence of Skaria who was coming fast, overtaking another vehicle. The rider as well as the pillion rider was thrown up and landed in the road 8 ft.ahead . Kiran sustained only minor injuries. It is submitted that

Kiran's chappals were found hooked on the brake pedal of the bike which would show that Kiran was driving the vehicle. The injured was taken to R.C.M.hospital in an autorikshaw. Sreekanth was immediately shifted to the Medical Trust Hpspital. Kiran and Skaria were discharged from the R.C.M.hospital on the same day. The Head Constable, who is the 8th respondent reached the R.C.M.hospital and recorded the F.I.S.on the same day in the presence of the mother of Kiran and friends. Kiran had specifically told the Head Constable that he was driving the vehicle and that he was going to drop Sreekanth at the bus stand and Sreekanth was the pillion rider. Sreekanth was unconscious through out and subsequently it is learnt that the Head Constable came to Mrs.Seetha Soman, the owner of the vehicle whose son Preman was also a student in the same class of the deceased and asked her to write down that the vehicle was driven by Sreekanth and that the same is meant only for keeping in the file. Later Seetha Soman has given a statement to the petitioner that it was on account of the compulsion by the Head Constable that she had written that the vehicle was driven by Sreekanth. The same is produced as Ext.P4. It is submitted that it was on account of the influence exerted by the parents of Kiran and others that the police have twisted the version and made the deceased the rider and Kiran, the pillion rider. The

petitioner coming to know of the same has complained to the Chief Minister and the Director General of Police as well as to the Deputy Inspector of Police, Ernakulam Range and to the City Commissioner of Police as well as to the Assistant Commissioner of Police (Traffic). The petitioner filed W.P.C.No.7794/2005 before this Court seeking for a direction to dispose of the representations made by him and the court has directed the 5th respondent, the Assistant Commissioner of Police, Traffic to dispose of the same and to ensure that investigation is proceeding on proper lines. Subsequently, he has received a letter from the C.I.of police wherein it is mentioned that there is no lapse on the part of the investigating officials in the matter. It is further pointed out that petty cases have been registered against the deceased as well as Smt.Seetha Soman under Section 5 read with Sections 180 and 181 of the Motor Vehicles Act. Subsequently, the Sub Inspector filed a final report dated 28-1-2005 wherein Sreekanth is mentioned as the rider of the vehicle. The petitioner suspects serious manipulations at the instance of the parents of Kiran and the collusion of the officials.

2. The father of Kiran has filed counter affidavit on behalf of Kiran who is the 11th respondent, stoutly denying the allegations. It is submitted that Kiran was not in a composed state of mind at the time

of recording of the F.I.S. and hence it was under a misapprehension that he has stated that he was the rider and Sreekanth was the pillion rider. It is submitted that the petitioner attempted to make use of the above accidental mistake of Kiran. Kiran was having head injury, abrasions, pain on the neck and bleeding from the ear and was shifted to Amritha Hospital and he has produced the photocopy of the discharge summary from the Amritha Hospital. On detecting the mistake in the statement of Kiran, the petitioner brought the same to the notice of the C.I.of police, City Traffic and the same was corrected. Sri.Premkumar who was the classmate of Kiran and Sreekanth has given a statement that it was Sreekanth who was driving the vehicle. Ext.P4 statement of Smt.Seetha Soman was obtained by the petitioner under compulsion. Earlier Seetha Soman had given a statement to the police affirming that it was Sreekanth who was driving the vehicle.

3. The petitioner has filed a reply affidavit reiterating his contentions. According to the petitioner, although Kiran had sustained only minor injuries, it was on legal advice that Kiran was again admitted at Amritha Hospital. It is pointed out that the discharge summary from Amritha Hospital showed that Kiran was discharged on request and that he was not having any serious injuries. The same

can be seen from the discharge summary of the R.C.M.Hospital also.

4. The 11th respondent Kiran after having attained majority has filed a statement fully supporting the version of his father.

5. The additional 10th respondent Mrs.Seetha Soman has filed a statement wherein it is submitted that the vehicle involved is owned by her and that the same was taken out by her son Sandeep, who was only 17 years old and he took away the vehicle when she had gone out of the house. It is her information from her son that it was Sreekanth who drove the vehicle from the house of Kiran. Her son Sandeep, Kiran and Sreekanth are classmates. When the Head Constable from the Traffic police station required her to give a statement, she mentioned the facts known to her. Later she went to the house of the petitioner to convey condolences. At the time the petitioner requested her to give another statement assuring that it would be used only in case of necessity and that the same would be helpful to her. It was at the instance of the petitioner that she gave Ext.P4 written statement. According to her, the findings of the investigating agency is correct.

6. The Case diary was produced as directed by this Court.

7. I find that both the deceased and Kiran were not having driving licence. The petitioner had moved this Court earlier vide

W.P.C.No.7794/2005 and this Court had directed the 5th respondent therein, i.e.Assistant Commissioner of Police, Traffic, Ernakulam to consider and dispose of Ext.P5 representation submitted by the petitioner and to ensure that the investigation is proceeding on the proper lines. Ext.P8 is the intimation given by the Circle Inspector of Police to the petitioner that on further enquiries, it has been found that it was Sreekanth who was driving the vehicle. But the compliance of the order in W.P.C.No.7794/2005 is not properly reported as such. There is nothing to show that the Asst.Commissioner, Traffic did anything to supervise the investigation. As per Ext.R11(c), the discharge summary of Kiran issued from the Amritha Institute of Medical Science, Kiran had sustained only a mild cerebral edema with scalp contusion. The C.D. did not contain the further statements of the Head Constable who recorded the F.I.S. As to how the mistake happened while Kiran mentioned the name of the rider is not properly explained. As to the then condition of Kiran as alleged by the prosecution, the medical records, it appears are not helpful. The statement of Seetha Soman, owner of the motor cycle driven by the deceased and Kiran is of no consequence as the same is only hearsay.

8. In the circumstances, the 4th respondent, City Police Commissioner is directed to see that the matter is further investigated

by a superior officer of police and the final report is filed at the earliest. Petty Case, S.T.No.2352/2005 taken against the deceased Sreekanth shall stand abated. The writ petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.